

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

MIGUEL ANGEL LOPEZ,

Defendant and Appellant.

B165330

(Los Angeles County  
Super. Ct. No. LA041619)

APPEAL from a judgment of the Superior Court of Los Angeles County, John S. Fisher, Judge. Affirmed.

Patricia L. Watkins, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Joseph P. Lee and Tita Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

---

## INTRODUCTION

Defendant and appellant Miguel Angel Lopez was convicted by jury of corporal injury to his spouse (Pen. Code, § 273.5, subd. (a)<sup>1</sup>), making criminal threats (§ 422), and dissuading a witness from prosecuting a crime (§ 136.1, subd. (b)(2)). Appellant was sentenced to a total of 13 years in prison. Appellant appeals from the judgment.

Appellant contends: (1) there was no substantial evidence to support the criminal threat conviction; and (2) the trial court erred in refusing to instruct on the lesser included offense of spousal battery. We affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

### 1. *Facts.*

Appellant and his wife, Evelyn Patricia Castaneda (Castaneda), separated around February, March or April 2002. In October 2002, Castaneda was living with her aunt, Gloria Delacruz, in a first floor apartment building in Canoga Park. Castaneda did not know where appellant lived. Periodically, appellant tried to convince Castaneda to reconcile.

On October 11, 2002, Castaneda left her job at 6:00 p.m. and returned to the apartment. Appellant was waiting for her. When Castaneda opened the door, appellant followed her inside. Appellant asked Castaneda to reconcile. After about 20 or 30 minutes, appellant became angry at Castaneda's repeated refusals. Appellant hit her twice on her left shoulder with his closed fist. Castaneda was hurt.

Castaneda was afraid appellant would continue to hit her and thus, at appellant's request, she telephoned her mother. They both talked to Castaneda's mother. Appellant told Castaneda's mother that Castaneda would not reconcile. Castaneda stated she would not do so because appellant had hit her. Appellant and Castaneda continued to argue.

Using both hands, appellant pushed Castaneda onto the sofa. Trying to calm appellant so he would not hit her again, Castaneda stated that she might be willing to give

---

<sup>1</sup> All further undesignated statutory references are to the Penal Code.

him another chance. Appellant sat on Castaneda. He held her by the neck and choked her until it was difficult for her to breathe. Castaneda was afraid. She thought appellant was going to choke her to death. Castaneda could not get out from under appellant. Castaneda became increasingly afraid. With his hand still on her throat, appellant said he was going to kill her. Castaneda was scared and afraid appellant would kill her.

Castaneda's cousin Helen knocked on the door. Appellant let go of Castaneda. Helen came into the apartment and asked what was happening. Appellant said he had come to ask for forgiveness. Helen detained appellant so Castaneda could leave. For her own safety, Castaneda ran away. Castaneda went to the police station and told officers what had happened. She was upset, fearful, and in pain. She showed officers the red marks on her neck, left arm, and left shoulder. This included a two-inch scrape below her shoulder. She complained about the pain from her injuries. Fearing for her own safety, Castaneda did not return to the apartment until 4:00 or 5:00 a.m. the following morning. The apartment was a mess. A number of items had been moved, broken or tossed outside. These included the television, radio, stereo, speakers, clothing, ceramics, and sculptures.

Castaneda's cousin Estuirdo Gallardo (Gallardo), his wife, and their child, also lived in the Canoga Park apartment. When Gallardo arrived at the apartment on the evening of October 11, 2002, he saw that the home was in disarray. He also witnessed appellant throwing a mirror out the door. Appellant, who was angry, told Gallardo he had not been in his senses and he had tried to beat Castaneda. Appellant asked Gallardo to forgive him. Gallardo called the police from a pay telephone because appellant had broken the telephone.

When Los Angeles Police Officers arrived, appellant was hiding in the bushes. After being commanded to do so, appellant got up. Appellant resisted being handcuffed; he spun around and fled. Thereafter, appellant was found hiding under a truck. Appellant was arrested without further incident.

A few days later, on October 15, 2002, appellant telephoned Castaneda from jail. Appellant asked Castaneda to forgive him and to withdraw the charges. When she refused, appellant insisted. Appellant said that he would never harm her, but that a friend had offered to take revenge upon her. Appellant told Castaneda he had refused the offer and had refused to provide the friend with Castaneda's telephone number and address. Castaneda believed her life was in danger. She was afraid to be in public places as she felt threatened.

## *2. Procedure.*

Trial was held in January 2003. Appellant was convicted by jury of corporal injury to his spouse (§ 273.5, subd. (a)), making criminal threats (§ 422), and dissuading a witness from prosecuting a crime (§ 136.1, subd. (b)(2)).

In a bifurcated proceeding before the court, appellant admitted that he had suffered a prior serious or violent felony within the meaning of sections 667, subdivisions (b) through (i) and 1170.12, subdivisions (a) through (d), and that he had suffered a prior serious felony within the meaning of section 667, subdivision (a)(1). Appellant was sentenced to a total of 13 years in prison. Appellant appeals from the judgment.

## DISCUSSION

### *1. There was substantial evidence to support the criminal threat conviction.*

Appellant contends there is no substantial evidence to support the criminal threat conviction. (§ 422.) This contention is not persuasive.

“On appeal we review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence -- that is, evidence that is reasonable, credible, and of solid value -- from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.]” (*People v. Stanley* (1995) 10 Cal.4th 764, 792.)

Appellant does not suggest that the record lacked substantial evidence to prove that a threat was uttered. Rather, appellant argues there was no substantial evidence to prove that Castaneda experienced “sustained fear.”

In addition to other requirements, to be convicted of making a criminal threat, it must be shown that the victim threatened was “reasonably to be in sustained fear for his or her own safety . . . .” (§ 422.) In this context, the term “sustained fear” means “beyond what is momentary, fleeting, or transitory.” (*People v. Allen* (1995) 33 Cal.App.4th 1149, 1156, see also, *In re Ricky T.* (2001) 87 Cal.App.4th 1132, 1140.)

On October 11, 2002, appellant and Castaneda had a troubled relationship and were separated. On that date, appellant entered Castaneda’s apartment, uninvited. Appellant and Castaneda argued. Appellant pushed Castaneda to the sofa and grabbed her by the throat. With his hands on Castaneda’s throat, appellant choked Castaneda until it was difficult for her to breathe and he threatened to kill her. An opportunity for Castaneda to escape was provided when Castaneda’s cousin Helen came to the apartment. Castaneda was able to leave only because Helen detained appellant. Castaneda fled to the safety of the police. When Castaneda arrived at the police station, she was upset, fearful, and in pain. She did not return to her apartment until hours later, because she was frightened. These facts, including the relationship of the parties, appellant’s physical violence that accompanied the verbal threat, the fact that Castaneda sought refuge with the police immediately after the threat, demonstrate that Castaneda’s fear lasted from the moment the threat was uttered until many hours later. The threat was specific, targeted at Castaneda. It caused her to be fearful for her life and frightened for hours. These facts show that Castaneda’s fear was beyond what was momentary, fleeting, or transitory.

There was substantial evidence that Castaneda experienced sustained fear.

2. *The trial court did not err in refusing to instruct on the lesser included offense of spousal battery.*

Appellant contends that with respect to the charge of corporal injury to a spouse (§ 273.5, subd. (a)), the trial court erred in denying his motion to instruct the jury with the lesser-included offense of misdemeanor spousal battery. (§ 243, subd. (e).) This contention is not persuasive.

“ ‘ “It is settled that in criminal cases, even in the absence of a request, the trial court must instruct on the general principles of law relevant to the issues raised by the evidence. [Citations.] The general principles of law governing the case are those principles closely and openly connected with the facts before the court, and which are necessary for the jury’s understanding of the case.” [Citation.] That obligation has been held to include giving instructions on lesser included offenses when the evidence raises a question as to whether all of the elements of the charged offense were present [citation], but not when there is no evidence that the offense was less than that charged. [Citations.]’ ” (*People v. Breverman* (1998) 19 Cal.4th 142, 154.)

“[T]he existence of ‘any evidence, no matter how weak’ will not justify instructions on a lesser included offense, but such instructions are required whenever evidence that the defendant is guilty only of the lesser offense is ‘substantial enough to merit consideration’ by the jury. [Citations.] ‘Substantial evidence’ in this context is ‘ “evidence from which a jury composed of reasonable [persons] could . . . conclude[ ]” ’ that the lesser offense, but not the greater, was committed. [Citations.]” (*People v. Breverman, supra*, 19 Cal.4th at p. 162, original italics.)

Misdemeanor spousal battery (§ 243, subd. (e)) is a lesser included offense of corporal injury to a spouse or cohabitant, as defined in section 273.5. (*People v. Gutierrez* (1985) 171 Cal.App.3d 944, 952.)

Section 273.5 states that “Any person who willfully inflicts upon a person who is his or her spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child, corporal injury resulting in a traumatic condition, is guilty of a felony . . . .” For purposes of this section, “ ‘traumatic condition’ means a condition of the body, such as a wound or external or internal injury, whether of a *minor* or serious nature, caused by a physical force.” (§ 273.5, subd. (c); italics added.)

It is this “*injury* resulting in a traumatic condition that differentiates [the corporal injury crime pursuant to section 273.5] from [the] lesser offense[.]” of misdemeanor battery. (*People v. Gutierrez, supra*, 171 Cal.App.3d at p. 952.)

A *minor* injury to the victim's body may be sufficient injury for a corporal injury conviction under section 273.5. (*People v. Gutierrez, supra*, 171 Cal.App.3d at p. 952 [serious and minor injury are embraced within the definition of "traumatic condition"]; *People v. Abrego* (1993) 21 Cal.App.4th 133, 137 [same].) However, neither pain (i.e., soreness and tenderness), nor emotional upset is sufficient. There must be an injury. (*People v. Abrego, supra*.)

Appellant argues that only de minimis harm was inflicted upon Castaneda. Appellant suggests that the red marks did not constitute the "traumatic condition" as there was no evidence of bruising. Thus, according to appellant, he could have been convicted of the lesser included offense of spousal battery. Appellant's argument omits some of the evidence.

Even though Castaneda did not go to a doctor, she suffered more than soreness or tenderness. (Compare with *People v. Beasley* (2003) 105 Cal.App.4th 1078, 1085-1086 [bruising constitutes traumatic condition but prosecution failed to elicit testimony on some of the counts that such conditions resulted from the abuse].) After Castaneda was struck by appellant, she sought the safety of a police station. Her injuries were photographed by officers. These photographs, an officer's testimony, and Castaneda's testimony establish that Castaneda was bruised from appellant's physical attack. Castaneda had reddening around her neck from the choking. She had a red mark going across the inside of her neck traveling down half of her neck. There was a two-inch scrape along her right arm, below her shoulder. Castaneda was in pain. She treated her injuries with pills and ointment. While appellant's counsel described Castaneda's injuries as "fairly nonmajor," they were not insignificant.

Given the injuries sustained by Castaneda, the trial court correctly declined to instruct on the lesser offense of spousal battery. Castaneda's injuries were not de minimis. The evidence established that appellant was guilty of felony corporal injury to Castaneda and nothing less.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

CROSKEY, ACTING P. J.

KITCHING, J.